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S. 434

[Report No. 107-214]

To provide equitable compensation to the Yankton Sioux Tribe of South Dakota and the Santee Sioux Tribe of Nebraska for the loss of value of certain lands.

IN THE SENATE OF THE UNITED STATES

MARCH 1, 2001

Mr. DASCHLE (for himself, Mr. JOHNSON, Mr. HAGEL, and Mr. NELSON of Nebraska) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

JULY 22, 2002

Reported by Mr. INOUE, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To provide equitable compensation to the Yankton Sioux Tribe of South Dakota and the Santee Sioux Tribe of Nebraska for the loss of value of certain lands.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Yankton Sioux Tribe
3 and Santee Sioux Tribe Equitable Compensation Act”.

4 **SEC. 2. FINDINGS AND PURPOSES.**

5 (a) FINDINGS.—Congress finds that—

6 (1) by enacting the Act of December 22, 1944,
7 commonly known as the “Flood Control Act of
8 1944” (58 Stat. 887, chapter 665; 33 U.S.C. 701–
9 1 et seq.) Congress approved the Pick-Sloan Mis-
10 souri River Basin program (referred to in this sec-
11 tion as the “Pick-Sloan program”)—

12 (A) to promote the general economic devel-
13 opment of the United States;

14 (B) to provide for irrigation above Sioux
15 City, Iowa;

16 (C) to protect urban and rural areas from
17 devastating floods of the Missouri River; and

18 (D) for other purposes;

19 (2) the waters impounded for the Fort Randall
20 and Gavins Point projects of the Pick-Sloan pro-
21 gram have inundated the fertile, wooded bottom
22 lands along the Missouri River that constituted the
23 most productive agricultural and pastoral lands of,
24 and the homeland of, the members of the Yankton
25 Sioux Tribe and the Santee Sioux Tribe;

1 (3) the Fort Randall project (including the Fort
2 Randall Dam and Reservoir) overlies the western
3 boundary of the Yankton Sioux Tribe Indian Res-
4 ervation;

5 (4) the Gavins Point project (including the Gav-
6 ins Point Dam and Reservoir) overlies the eastern
7 boundary of the Santee Sioux Tribe;

8 (5) although the Fort Randall and Gavins Point
9 projects are major components of the Pick-Sloan
10 program, and contribute to the economy of the
11 United States by generating a substantial amount of
12 hydropower and impounding a substantial quantity
13 of water, the reservations of the Yankton Sioux
14 Tribe and the Santee Sioux Tribe remain undevel-
15 oped;

16 (6) the United States Army Corps of Engineers
17 took the Indian lands used for the Fort Randall and
18 Gavins Point projects by condemnation proceedings;

19 (7) the Federal Government did not give the
20 Yankton Sioux Tribe and the Santee Sioux Tribe an
21 opportunity to receive compensation for direct dam-
22 ages from the Pick-Sloan program, even though the
23 Federal Government gave 5 Indian reservations up-
24 stream from the reservations of those Indian tribes
25 such an opportunity;

1 (8) the Yankton Sioux Tribe and the Santee
2 Sioux Tribe did not receive just compensation for
3 the taking of productive agricultural Indian lands
4 through the condemnation referred to in paragraph
5 (6);

6 (9) the settlement agreement that the United
7 States entered into with the Yankton Sioux Tribe
8 and the Santee Sioux Tribe to provide compensation
9 for the taking by condemnation referred to in para-
10 graph (6) did not take into account the increase in
11 property values over the years between the date of
12 taking and the date of settlement; and

13 (10) in addition to the financial compensation
14 provided under the settlement agreements referred
15 to in paragraph (9)—

16 (A) the Yankton Sioux Tribe should re-
17 ceive an aggregate amount equal to
18 \$23,023,743 for the loss value of 2,851.40
19 acres of Indian land taken for the Fort Randall
20 Dam and Reservoir of the Pick-Sloan program;
21 and

22 (B) the Santee Sioux Tribe should receive
23 an aggregate amount equal to \$4,789,010 for
24 the loss value of 593.10 acres of Indian land lo-
25 cated near the Santee village.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) INDIAN TRIBE.—The term “Indian tribe”
 4 has the meaning given that term in section 4(e) of
 5 the Indian Self-Determination and Education Assist-
 6 ance Act (25 U.S.C. 450b(e)).

7 (2) SANTEE SIOUX TRIBE.—The term “Santee
 8 Sioux Tribe” means the Santee Sioux Tribe of Ne-
 9 braska.

10 (3) YANKTON SIOUX TRIBE.—The term
 11 “Yankton Sioux Tribe” means the Yankton Sioux
 12 Tribe of South Dakota.

13 **SEC. 4. YANKTON SIOUX TRIBE DEVELOPMENT TRUST**
 14 **FUND.**

15 (a) ESTABLISHMENT.—There is established in the
 16 Treasury of the United States a fund to be known as the
 17 “Yankton Sioux Tribe Development Trust Fund” (re-
 18 ferred to in this section as the “Fund”). The Fund shall
 19 consist of any amounts deposited in the Fund under this
 20 Act.

21 (b) FUNDING.—On the first day of the 11th fiscal
 22 year that begins after the date of enactment of this Act,
 23 the Secretary of the Treasury shall, from the General
 24 Fund of the Treasury, deposit into the Fund established
 25 under subsection (a)—

26 (1) \$23,023,743; and

1 (2) an additional amount that equals the
2 amount of interest that would have accrued on the
3 amount described in paragraph (1) if such amount
4 had been invested in interest-bearing obligations of
5 the United States, or in obligations guaranteed as to
6 both principal and interest by the United States, on
7 the first day of the first fiscal year that begins after
8 the date of enactment of this Act and compounded
9 annually thereafter.

10 (c) INVESTMENT OF TRUST FUND.—It shall be the
11 duty of the Secretary of the Treasury to invest such por-
12 tion of the Fund as is not, in the Secretary of Treasury’s
13 judgment, required to meet current withdrawals. Such in-
14 vestments may be made only in interest-bearing obliga-
15 tions of the United States or in obligations guaranteed as
16 to both principal and interest by the United States. The
17 Secretary of the Treasury shall deposit interest resulting
18 from such investments into the Fund.

19 (d) PAYMENT OF INTEREST TO TRIBE.—

20 (1) WITHDRAWAL OF INTEREST.—Beginning on
21 the first day of the 11th fiscal year after the date
22 of enactment of this Act and, on the first day of
23 each fiscal year thereafter, the Secretary of the
24 Treasury shall withdraw the aggregate amount of in-
25 terest deposited into the Fund for that fiscal year

1 and transfer that amount to the Secretary of the In-
2 terior for use in accordance with paragraph (2).
3 Each amount so transferred shall be available with-
4 out fiscal year limitation.

5 (2) PAYMENTS TO YANKTON SIOUX TRIBE.—

6 (A) IN GENERAL.—The Secretary of the
7 Interior shall use the amounts transferred
8 under paragraph (1) only for the purpose of
9 making payments to the Yankton Sioux Tribe,
10 as such payments are requested by that Indian
11 tribe pursuant to tribal resolution.

12 (B) LIMITATION.—Payments may be made
13 by the Secretary of the Interior under subpara-
14 graph (A) only after the Yankton Sioux Tribe
15 has adopted a tribal plan under section 6.

16 (C) USE OF PAYMENTS BY YANKTON
17 SIOUX TRIBE.—The Yankton Sioux Tribe shall
18 use the payments made under subparagraph
19 (A) only for carrying out projects and programs
20 under the tribal plan prepared under section 6.

21 (e) TRANSFERS AND WITHDRAWALS.—Except as
22 provided in subsections (c) and (d)(1), the Secretary of
23 the Treasury may not transfer or withdraw any amount
24 deposited under subsection (b).

1 **SEC. 5. SANTEE SIOUX TRIBE DEVELOPMENT TRUST FUND.**

2 (a) ESTABLISHMENT.—There is established in the
3 Treasury of the United States a fund to be known as the
4 “Santee Sioux Tribe Development Trust Fund” (referred
5 to in this section as the “Fund”). The Fund shall consist
6 of any amounts deposited in the Fund under this Act.

7 (b) FUNDING.—On the first day of the 11th fiscal
8 year that begins after the date of enactment of this Act,
9 the Secretary of the Treasury shall, from the General
10 Fund of the Treasury, deposit into the Fund established
11 under subsection (a)—

12 (1) \$4,789,010; and

13 (2) an additional amount that equals the
14 amount of interest that would have accrued on the
15 amount described in paragraph (1) if such amount
16 had been invested in interest-bearing obligations of
17 the United States, or in obligations guaranteed as to
18 both principal and interest by the United States, on
19 the first day of the first fiscal year that begins after
20 the date of enactment of this Act and compounded
21 annually thereafter.

22 (c) INVESTMENT OF TRUST FUND.—It shall be the
23 duty of the Secretary of the Treasury to invest such por-
24 tion of the Fund as is not, in the Secretary of Treasury’s
25 judgment, required to meet current withdrawals. Such in-
26 vestments may be made only in interest-bearing obliga-

1 tions of the United States or in obligations guaranteed as
2 to both principal and interest by the United States. The
3 Secretary of the Treasury shall deposit interest resulting
4 from such investments into the Fund.

5 (d) PAYMENT OF INTEREST TO TRIBE.—

6 (1) WITHDRAWAL OF INTEREST.—Beginning on
7 the first day of the 11th fiscal year after the date
8 of enactment of this Act and, on the first day of
9 each fiscal year thereafter, the Secretary of the
10 Treasury shall withdraw the aggregate amount of in-
11 terest deposited into the Fund for that fiscal year
12 and transfer that amount to the Secretary of the In-
13 terior for use in accordance with paragraph (2).
14 Each amount so transferred shall be available with-
15 out fiscal year limitation.

16 (2) PAYMENTS TO SANTEE SIOUX TRIBE.—

17 (A) IN GENERAL.—The Secretary of the
18 Interior shall use the amounts transferred
19 under paragraph (1) only for the purpose of
20 making payments to the Santee Sioux Tribe, as
21 such payments are requested by that Indian
22 tribe pursuant to tribal resolution.

23 (B) LIMITATION.—Payments may be made
24 by the Secretary of the Interior under subpara-

1 graph (A) only after the Santee Sioux Tribe has
 2 adopted a tribal plan under section 6.

3 (C) USE OF PAYMENTS BY SANTEE SIOUX
 4 TRIBE.—The Santee Sioux Tribe shall use the
 5 payments made under subparagraph (A) only
 6 for carrying out projects and programs under
 7 the tribal plan prepared under section 6.

8 (e) TRANSFERS AND WITHDRAWALS.—Except as
 9 provided in subsections (c) and (d)(1), the Secretary of
 10 the Treasury may not transfer or withdraw any amount
 11 deposited under subsection (b).

12 **SEC. 6. TRIBAL PLANS.**

13 (a) IN GENERAL.—Not later than 24 months after
 14 the date of enactment of this Act, the tribal council of
 15 each of the Yankton Sioux and Santee Sioux Tribes shall
 16 prepare a plan for the use of the payments to the tribe
 17 under section 4(d) or 5(d) (referred to in this subsection
 18 as a “tribal plan”).

19 (b) CONTENTS OF TRIBAL PLAN.—Each tribal plan
 20 shall provide for the manner in which the tribe covered
 21 under the tribal plan shall expend payments to the tribe
 22 under ~~subsection (d)~~ *section 4(d) or 5(d)* to promote—

- 23 (1) economic development;
- 24 (2) infrastructure development;

1 (3) the educational, health, recreational, and so-
2 cial welfare objectives of the tribe and its members;
3 or

4 (4) any combination of the activities described
5 in paragraphs (1), (2), and (3).

6 (c) TRIBAL PLAN REVIEW AND REVISION.—

7 (1) IN GENERAL.—Each tribal council referred
8 to in subsection (a) shall make available for review
9 and comment by the members of the tribe a copy of
10 the tribal plan for the Indian tribe before the tribal
11 plan becomes final, in accordance with procedures
12 established by the tribal council.

13 (2) UPDATING OF TRIBAL PLAN.—Each tribal
14 council referred to in subsection (a) may, on an an-
15 nual basis, revise the tribal plan prepared by that
16 tribal council to update the tribal plan. In revising
17 the tribal plan under this paragraph, the tribal
18 council shall provide the members of the tribe oppor-
19 tunity to review and comment on any proposed revi-
20 sion to the tribal plan.

21 (3) CONSULTATION.—In preparing the tribal
22 plan and any revisions to update the plan, each trib-
23 al council shall consult with the Secretary of the In-
24 terior and the Secretary of Health and Human Serv-
25 ices.

1 (4) AUDIT.—

2 (A) IN GENERAL.—The activities of the
3 tribes in carrying out the tribal plans shall be
4 audited as part of the annual single-agency
5 audit that the tribes are required to prepare
6 pursuant to the Office of Management and
7 Budget circular numbered A-133.

8 (B) DETERMINATION BY AUDITORS.—The
9 auditors that conduct the audit described in
10 subparagraph (A) shall—

11 (i) determine whether funds received
12 by each tribe under this section for the pe-
13 riod covered by the audits were expended
14 to carry out the respective tribal plans in
15 a manner consistent with this section; and

16 (ii) include in the written findings of
17 the audits the determinations made under
18 clause (i).

19 (C) INCLUSION OF FINDINGS WITH PUBLI-
20 CATION OF PROCEEDINGS OF TRIBAL COUN-
21 CIL.—A copy of the written findings of the au-
22 dits described in subparagraph (A) shall be in-
23 serted in the published minutes of each tribal
24 council's proceedings for the session at which
25 the audit is presented to the tribal councils.

1 (d) PROHIBITION ON PER CAPITA PAYMENTS.—No
 2 portion of any payment made under this Act may be dis-
 3 tributed to any member of the Yankton Sioux Tribe or
 4 the Santee Sioux Tribe of Nebraska on a per capita basis.

5 **SEC. 7. ELIGIBILITY OF TRIBE FOR CERTAIN PROGRAMS**
 6 **AND SERVICES.**

7 (a) IN GENERAL.—No payment made to the Yankton
 8 Sioux Tribe or Santee Sioux Tribe pursuant to this Act
 9 shall result in the reduction or denial of any service or
 10 program to which, pursuant to Federal law—

11 (1) the Yankton Sioux Tribe or Santee Sioux
 12 Tribe is otherwise entitled because of the status of
 13 the tribe as a federally recognized Indian tribe; or

14 (2) any individual who is a member of a tribe
 15 under paragraph (1) is entitled because of the status
 16 of the individual as a member of the tribe.

17 (b) EXEMPTIONS FROM TAXATION.—No payment
 18 made pursuant to this Act shall be subject to any Federal
 19 or State income tax.

20 (c) POWER RATES.—No payment made pursuant to
 21 this Act shall affect Pick-Sloan Missouri River Basin
 22 power rates.

23 **SEC. 8. STATUTORY CONSTRUCTION.**

24 Nothing in this Act may be construed as diminishing
 25 or affecting any water right of an Indian tribe, except as

1 specifically provided in another provision of this Act, any
2 treaty right that is in effect on the date of enactment of
3 this Act, *or* any authority of the Secretary of the Interior
4 or the head of any other Federal agency under a law in
5 effect on the date of enactment of this Act.

6 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated such sums
8 as are necessary to carry out this Act, including such sums
9 as may be necessary for the administration of the Yankton
10 Sioux Tribe Development Trust Fund under section 4 and
11 the Santee Sioux Tribe of ~~Nebraska~~ Development Trust
12 Fund under section 5.

13 **SEC. 10. EXTINGUISHMENT OF CLAIMS.**

14 Upon the deposit of funds under sections 4(b) and
15 5(b), all monetary claims that the Yankton Sioux Tribe
16 or the Santee Sioux Tribe of Nebraska has or may have
17 against the United States for loss of value or use of land
18 related to lands described in section 2(a)(10) resulting
19 from the Fort Randall and Gavins Point projects of the
20 Pick-Sloan Missouri River Basin program shall be extin-
21 guished.

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